STATE OF MICHIGAN

COURT OF APPEALS

JAMES PARKER,

Plaintiff-Appellant,

v

TERRY PAYNE, SR. and PAYNE LANDSCAPING, INC.,

Defendants-Appellees,

and

DUNCO HOLDING COMPANY, L.L.C., d/b/a THEY SAY/THEY SAY RIBS,

Defendant.

UNPUBLISHED
January 13, 2011

No. 294450
Wayne Circuit Court
LC No. 07-732211-CZ

Before: HOEKSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right the order awarding defendants Terry Payne, Sr. and Payne Landscaping, Inc. (defendants) sanctions under MCR 2.403(O) in the amount of $119,500. We affirm.

Following case evaluation, this case was unanimously evaluated at $200,000. All defendants, including Dunco Holding Company, L.L.C., d/b/a They Say/They Say Ribs (They Say Ribs), accepted the evaluation. Plaintiff rejected by filing no response. Defendants then filed a motion for partial summary disposition with respect to the claim against They Say Ribs, which was granted. The claim pertaining to Payne and Payne Landscaping proceeded to trial. A judgment of no cause of action was entered following the jury's verdict.

Defendants moved for case evaluation sanctions and attached a detailed billing statement of charges incurred after the rejection of the case evaluation. Pertinent to this appeal, plaintiff generally asserted that the entire bill was unreasonable and excessive, and requested earlier billings to evaluate whether there were any redundancies. More specifically, plaintiff asserted that defendants had earlier raised the issue upon which summary disposition was granted to They Say Ribs, and plaintiff wanted to explore whether the research claimed in relationship to the

summary disposition motion was redundant. Further, plaintiff maintained that sanctions should not be awarded based on the "interest of justice" exception found in MCR 2.403(O)(11).

Plaintiff first argues that an evidentiary hearing should have been held. In *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002), this Court stated that "[a] trial court's decision that an evidentiary hearing is not warranted is reviewed for an abuse of discretion." However, in *Smith v Khouri*, 481 Mich 519, 532; 751 NW2d 472 (2008), our Supreme Court stated, "If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence." This holding appears to take away a trial court's discretionary authority to deny an evidentiary hearing if a factual dispute exists. However, a determination must be made regarding whether there is a genuine factual dispute. We find no genuine dispute in this case.

Preliminarily, plaintiff *generally* requested additional billings to ascertain whether there were any redundancies. However, he then tailored the request and asserted that the redundancies at issue pertained to the summary disposition motion. To the extent plaintiff was requesting an evidentiary hearing with respect to *all* the billings, we find that he failed to establish a genuine factual dispute.

With regard to the summary disposition motion, even if there was some prior research, in preparing a new brief counsel likely would have had to review research already done and would have had to ensure that no new case law existed. We conclude that 16.1 hours spent on a summary disposition brief with attachments was not an unreasonable amount of time in this case. Thus, based on the facts of this case, we conclude that there was no *genuine* factual dispute with regard to the reasonableness of this particular billing.

Plaintiff next argues that the trial court erred in failing to invoke the "interest of justice" exception. Plaintiff asserts that a sanction should not be imposed because Payne Landscaping was being audited and owed back taxes, and plaintiff would have considered other factors in deciding how to respond to the case evaluation if They Say Ribs had not been involved. In addition, plaintiff claims there was disparity in income that would have justified denying sanctions. We review a trial court's decision whether to invoke the interest of justice exception for an abuse of discretion. *Harbour v Correctional Med Servs, Inc*, 266 Mich App 452, 465; 702 NW2d 671 (2005).

The interest of justice exception is not to be "too broadly applied so as to swallow the general rule of [MCR 2.403(O)(1)] and must not be too narrowly construed so as to abrogate the exception." *Haliw v Sterling Hts (On Remand) (Haliw II)*, 266 Mich App 444, 448; 702 NW2d 637 (2005), quoting *Haliw v Sterling Hts (Haliw I)*, 257 Mich App 689, 706-707; 669 NW2d 563 (2003), rev'd on other grounds 471 Mich 700 (2005). In the *Haliw* opinions, this Court indicated that the reasonableness of a refusal to accept a case evaluation is not a factor to consider in evaluating the "interest of justice" and that income disparity alone would not be a valid basis. *Haliw II*, 266 Mich App at 448; *Haliw I*, 257 Mich App at 707. These considerations do not trigger "a public interest in having an issue judicially decided." *Haliw II*, 266 Mich App at 449 (quotations omitted). That the summary disposition motion could have been pursued before case evaluation also does not trigger "a public interest in having an issue judicially decided."

Moreover, the trial court did not abuse its discretion in concluding that the timing of the motion was reasonable. Accordingly, the trial court properly declined to apply the "interest of justice" exception.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello